



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,975	07/12/2003	David R. Payne	82380-00661	4897

28839 7590 11/03/2006
TOMLINSON & O'CONNELL, P.C.
TWO LEADERSHIP SQUARE
211 NORTH ROBINSON, SUITE 450
OKLAHOMA CITY, OK 73102

EXAMINER

ADDIE, RAYMOND W

ART UNIT PAPER NUMBER

3671

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

10/6/99

EXAMINER

ART UNIT	PAPER
----------	-------

20061021

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Appellant's reply brief filed 9/22/06 has been noted with one comment directed to newly raised arguments by Appellant.

Appellant suggests an improper New Grounds of Rejection was raised in the Examiner's Answer mailed 7/25/06. Suggesting reliance on the teachings of US Patent # 5,746,278 in the Examiner's Answer constitutes a New Grounds of Rejection. However, the Examiner does not concur.

Patent # 5,746,278 was incorporated by reference in the specification of Alft, # 6,308,787, the secondary reference in the rejection of claims 4-12.

Appellants must recognize their duty to consider a patented reference in its entirety, including any and all patents incorporated by reference, in the specification of the cited prior art.

Evidence Appellant was aware Alft incorporated by reference the patent to Bischel et al. # 5,746,278 is found in Appellant's IDS's filed 4/27/04 and 2/20/2002, which cite both patents to Bischel et al. '278 and Alft '787.

Therefore, Applicant is expected to have had full knowledge of both patents, and at the time of filing, should have been well aware Alft's incorporation by reference in the specification, of the '278 patent.


It should be clear, the reference to Bischel et al. '278 is not a newly cited reference, and the incorporation by reference in the specification by Alft, clearly makes the disclosure of Alft encompassing of the subject matter in the Bischel et al. patent, as if Alft explicitly disclosed the same information.

Further, the Examiner made reference to the subject matter incorporated by Alft, as early as 10/22/2002 in the Final Rejection of parent application 09/481,351, abandoned.

Therefore, since the allegation of a new grounds of rejection, is based on subject matter that was incorporated by reference, by the secondary reference in the rejection of claims 4-12, and Appellant cited the patent incorporated in an IDS, and the Examiner made specific reference to the subject matter incorporated by reference, at least as early as October 2002; the argument is not persuasive and the Application appears ready for decision by the US Patent Office Board of Interferences and Appeals.

Additional arguments on pages 3-10 of Appellant's reply brief are noted with no additional comment.

20061020


RAYMOND ADDIE
PRIMARY EXAMINER